



ADR Newsletter

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CONGRATULATIONS TO ROSA C. FRANCO, NEW DEPUTY ASSISTANT SECRETARY

Rosa C. Franco was announced as the new Deputy Assistant Secretary of the Office of Resolution Management (ORM) by the Secretary of Veterans Affairs on April 20, 2012.

As Deputy Assistant Secretary (DAS), Ms. Franco serves as the principal advisor to the Assistant Secretary for Human Resources and Administration on the Equal Employment Opportunity (EEO), complaint process and Alternative Dispute Resolution (ADR) in VA.



“I consider it an honor to lead such a talented team of professionals and look forward to hearing your ideas on how we can best serve our clients, create the best work environment possible, and remain solid contributors to VA’s transformation,” Ms. Franco stated in a message sent to the ORM team following her announcement.

With more than 20 years of management experience in the field of EEO, ORM is fortunate to have Ms. Franco as its leader. Before joining ORM, Ms. Franco was employed by the New York VA Medical Center from 1987 to 1998, where she held a series of positions of increasingly elevated responsibility, including EEO Manager, Principal Special Advisor to the Chief Executive Officer, and Executive Assistant to the Director.

Prior to her promotion to DAS, Ms. Franco served as the Associate Deputy Assistant Secretary as well as Chief Operating Officer for ORM where she was responsible for the coordination of EEO complaint-related services to all VA facilities throughout the United States. As a member and leader of the ORM team, Ms. Franco has developed the technical, leadership and people skills to help resolve workplace conflict personally and as a mentor to ADR specialists and managers.

“I am extremely proud of the ORM team and the passion, commitment and competence each of you show as you resolve work place conflict for department employees who serve our deserving Veterans,” Ms. Franco said.

Third Culture - Creating a Climate for a Successful Mediation

by Dave Aschaeik (From Mediate.com, January 2012)

In “Cultural Competence – Transcending Culture Differences in Mediation,” cultural competence was described as an indispensable capability in a mediator’s toolkit. Cultural competence was presented as the ability for a mediator to *not only* identify, acknowledge and explain cultural influences on parties within a dispute, but to also transcend the cultural differences in a way that serves the dispute resolution process. Effectively, cultural competence involves a mediator’s ability to navigate cultural factors that are present in and bring to bear on a dispute and its resolution. A mediator aims to find a common ground across disputing parties with respect for and in spite of their cultural differences, and this common ground serves as a platform for resolving a dispute to optimize satisfaction of disputing parties. Therefore, a mediator’s cultural competence is essential for the mediation process and can make the difference between the success or failure of mediation.

While cultural competence is inarguably critical to successful mediation, it is not the only capability a mediator should have in his or her toolkit. A number of years ago, an interesting article was published in the International Journal of Intercultural Communication by Fred Casrnir. In the article, Casrnir (1999) introduced the ‘third culture’ and described what it is and how it influences communicative instances. Imagine a case in which two parties try to communicate. Each party has a unique cultural heritage that they bring to an interaction and this cultural heritage shapes their assumptions about and expectations of a communicative endeavor. Since parties in a communication bring different cultural heritages with them to an interaction, it is possible, if not likely, that the parties will have different assumptions surrounding and expectations of the communication. As might be expected, different assumptions and expectations open the door to miscommunication, misunderstandings and conflicts. In his article, Casrnir (1999) cites Smith (1996), who claims that: “intercultural exchanges are commonly asymmetrical because of unrelated sets of expectations and definitions.”

If communication represents a purposeful ‘coming together’ of people with different cultural heritages, a key question is how to achieve the purpose of a communication productively, in spite of differences that have implications for communication effectiveness and success? To Casrnir (1999), ‘*third culture*’ represents a bridge between parties in a communication that enables parties to communicate productively. He defines third culture as: “construction of a mutually beneficial interactive environment in which individuals from different cultures can function in a way beneficial to all involved” (Casrnir, 1999, p. 92).

An important question, however, is whether parties in a communication are even capable of achieving objectivity that is necessary to foster a third culture. It might be suggested that the cultural characteristics of an individual are so deeply ingrained that an individual may have trouble attaining the level of perspective that is required to understand how their individual cultures affect their assumptions and expectations as well as the communicative relationship and the communication effort. Furthermore, achieving the necessary level of objectivity and perspective to foster a third culture would presumably be particularly difficult in the case of a culture clash between communicating parties.

(Continued on Page 3)

Third Culture (continued)

The relationship between mediation and fostering a third culture is possibly becoming a bit clearer. As has been suggested, culture clashes between communicating parties are often the sources of conflicts and disputes. Yet, overcoming culture clashes can be difficult for disputing parties because a level of objectivity is necessary to do so. In a dispute, the parties are frequently unable, if not unwilling, to develop objectivity and even empathy that is necessary for the parties to arrive at a satisfactory resolution to their dispute. The inability or unwillingness of disputing parties to find a common ground upon which to build positive communication and understanding – or a third culture – is what leads these disputes to require outside intervention. In other words, the outside intervention is used to foster a foundation for communication about a dispute that will lead to its resolution.

Not surprisingly, there are two approaches to seeking outside intervention that will assist in fostering a foundation for communication about a dispute to lead to its resolution. It should be clear that one approach involves litigation and one approach involves mediation. Within the context of litigation, individuals rely on lawyers to act as extensions of themselves that will often reinforce and justify a disputant's position and interests; this is frequently an adversarial approach that may result in perpetuation of culture clashes and reinforcement of cultural differences for the purposes of ultimately designating a winner and a loser. Or, in the case of litigation, culture might be ignored altogether, while the legal interpretation is privileged above the disputing parties, their interests and their cultural characteristics.

Mediation, however, relies on a different approach, central to which is the mediator's effort to build a third culture à la Casrnir (1999). Thus, the mediator – an *impartial* or *neutral* party – identifies and respects cultures presented in a dispute *and* seeks to understand impacts of cultural differences on a dispute. However, a mediator aims to *transcend* cultural differences by fashioning a space – a third culture – wherein a mediator fosters *productive communications* – communications that move disputing parties towards a mutually satisfying resolution to a dispute. So, the key question that then arises is how a mediator might fashion such a space?

A key contention of this article is that a combination of a mediator's professional training and cultural competence are critical for fostering a third culture. A mediator's professional training values a conciliatory, agreement-focused approach to dispute resolution which, in essence, privileges neutrality and aims to optimally satisfy all involved parties. Cultural competence, as described in the Cultural Competence article, involves a mediators' ability to identify and respect cultural differences manifested in a dispute and to navigate the differences in a way that allows all parties to feel understood and valued.

(more on page 8)

Looking for ADR resources?

Mediate.com provides a free membership to individuals interested in reading articles related to mediation and other dispute resolution processes.

For more information go to: www.mediate.com

DID YOU KNOW...

August 26th is Women's Equality Day.

At the behest of Rep. Bella Abzug (D-NY), in 1971 the U.S. Congress designated August 26 as "Women's Equality Day."

The date was selected to commemorate the 1920 passage of the 19th Amendment to the Constitution, granting women the right to vote. This was the culmination of a massive, peaceful civil rights movement by women that had its formal beginnings in 1848 at the world's first women's rights convention, in Seneca Falls, New York.

The observance of Women's Equality Day not only commemorates the passage of the 19th Amendment, but also calls attention to women's continuing efforts toward full equality. Workplaces, libraries, organizations, and public facilities now participate with Women's Equality Day programs, displays, video showings, or other activities.

Class is in Session! Should Mediators Sign Settlement Agreements?

~Gregory Burke, ORM Ombudsman

Question: Should mediators sign settlement agreements?

A neutral in a mediation was recently asked to sign a settlement agreement and was uncertain whether he could or should sign the agreement.

Answer: We advise mediators not to sign settlement agreements for several reasons.

First, mediators are not parties to the agreements. The standard settlement agreements do not provide for mediators' or mediators' signatures. There are no provisions for the mediators to execute the agreements as a party or as a witness. Mediators have no rights to protect in either capacity.

Second, mediators who execute such agreements are more likely to be pulled into any subsequent dispute between the parties over the terms of the agreement. As a signatory to the agreement, the mediator would be directly or indirectly vouchsafing for its terms. That status would arguably provide sufficient justification to a third party adjudicator to seek testimony or the mediator's involvement in any dispute over the terms of the agreement through the request for testimony from the mediator as to what the mediator believed he/she was attesting to in the agreement.

Third, the mediator presumably plays no role in ADR following execution of the agreement. Under the Administrative Dispute Resolution Act (ADRA), the parties' communications with the mediator are not protected from disclosure after the settlement agreement's execution. The mediator maintains the role of mediator only through resolution. By executing the agreement and extending his role with the parties, the mediator risks being pulled into subsequent discussions with either party over the terms of the agreement and their meaning whether or not such discussions result in litigation. In either event, the mediator's role as an independent, impartial third party may be compromised.

If the parties anticipate any issue regarding the meaning of the terms of the settlement agreement, then the settlement agreement should be reviewed for clarity and amended if necessary.

ORM recommends that, if a mediator is asked to sign a settlement agreement, the mediator firmly decline while providing a brief description for their reluctance not to sign the agreement.



ADVANCE Your Knowledge and Skill in
Managing Conflict and Resolving Disputes through Mediation
by taking classes at the Justice Center of Atlanta
sponsored by the Office of Resolution Management,
Workplace ADR Office.

Targeted Audience: Senior Executives, GS-14-15s, GS-12-13 Supervisors,
LVA Participants, and
Title-38 Equivalents who are in Supervisory Positions

Taking an **ADVANCE** step toward Managing Conflict and Resolving Disputes through Mediation training is a key initiative in VA's Transformation into the 21st Century, and one of several training programs and professional development services offered through **ADVANCE**. The Secretary, Deputy Secretary, and Assistant Secretary for Human Resources and Administration feel strongly that VA's senior leaders must possess the knowledge and skill to effectively manage conflict and resolve disputes. It is the Office of Resolution Management's (ORM) role to provide you with the resources and support you need to achieve this goal. Managing Conflict and Resolving Disputes Training is conducted by the Justice Center of Atlanta (JCA); this institution has led the field of training and practice in conflict resolution for over 30 years. The JCA is a nationally recognized provider of top quality practice and instruction in mediation, and has gained recognition in the U.S. Government Accounting Office report of August 1997 as being "...recognized as one of the leading institutions in the United States for the practice and teaching of mediation."

The Managing Conflict and Resolving Disputes through Mediation training is a three day course, and it provides an opportunity to examine the factors that contribute to workplace conflict. It offers tools that managers can use to prevent these situations from escalating and diverting valuable time, resources, and energy from our mission. The course is balanced to include information on how to better manage conflict (i.e., asking effective questions, dealing with difficult people, negotiation skills), and understanding the mediation process. While not asking you to become a professional mediator among your many other responsibilities at VA, it is hoped that by spending in-depth time studying, discussing, and trying the myriad of techniques and communication skills related to the mediation process, you will adopt new approaches, ideas, and skills in dealing with disputes. Being familiar with the mediation process when you participate as a management official, you will be better prepared to maximize positive results. All of this will benefit you, all employees with whom you interact, and ultimately, the Veterans that you serve.

The dates for this 3-day training session are: September 11-13, October 23-25, November 6-8, December 11-13, 2012, January 15-17, February 26-28, March 19-21, April 23-25, May 21-23, 2013. You may register in TMS at the following link: <https://www.tms.va.gov/plateau/user/login.do>

All questions regarding these classes may be directed to Rita Reese, Acting ADR Manager, in the Workplace ADR Office at rita.reese@va.gov.

The Importance of the Pre-Mediation Period: Pre-Planning For Outcomes.

~ B.J. Ocker, ADR Specialist

Many of us have made plans for the summer months. Whether your plans include camping, visiting relatives, taking a road trip to see a historical landmark, completing home projects, or just sitting at the beach, there is one common theme: pre-planning.

Pre-planning for summer fun requires requesting time off, gathering information about your plans, and creating a strategy for completion. Before the trip we may create a packing list of everything we think we will need, and check to make sure to not leave something behind. When it comes to resolving disputes, pre-planning is equally as important.

For Mediators, we must ensure we have the proper documentation required for the mediation session and a method for creating a settlement agreement. Unfortunately, the participants may not come as well prepared. Have you ever been involved in a mediation where one party, or even both first comment, "I don't know why I am here"?, or during the session state, "I am not sure if I have the authority to make a decision"? Another possibility is that the respondent may not anticipate what will be requested from the complainant to resolve the dispute.

EEO and ADR Program Managers and Mediators can be valuable resources in the success of the mediation session with some pre-planning as well. As part of the communication with participants creating a "packing list" may be useful.

Here are some items to consider as part of a "packing list":

The Participant Packing List:



- Identify the issue(s) that created the dispute.
- Options for resolving the dispute
 - Having only one option may make resolution difficult.
 - Know your limitations on the options.
 - "Must haves" versus "would likes".
- Names and contact information of others that may be needed to complete the settlement.
- Clear schedule to ensure adequate time is available.
- Date, time and location of session.

This list is not all inclusive, but rather a suggestion to help parties come prepared to settle the dispute, not just discuss the issues.

You might be able to relate to how a vacation or trip may be impacted when a key item is left behind. The same can be said about dispute resolution. By preparing parties in advance of a mediation session, improved results are possible. Remember your packing lists as we all get out and enjoy this summer!



ADR around the VA



Advanced Mediation Training, Tucson, AZ April 3 - 5

More ADR around the VA



Basic Mediation Training, Marion, IL May 14 - 18



Conflict Coaching Course, Baltimore, MD April 23 - 26



Basic Mediation Training, Topeka, KS May 21 - 25

Strategies for Dispute Resolution

- When angry, separate yourself from the situation and take time to cool out.
- Attack the problem, not the person. Start with a compliment.
- Communicate your feelings assertively, NOT aggressively. Express them without blaming.
- Focus on the issue, NOT your position about the issue.
- Accept and respect that individual opinions may differ, don't try to force compliance, work to develop common agreement.
- Do not review the situation as a competition, where one has to win and one has to lose.
- Work toward a solution where both parties can have some of their needs met.
- Focus on areas of common interest and agreement, instead of areas of disagreement and opposition.
- NEVER jump to conclusions or make assumptions about what another is feeling or thinking.
- Listen without interrupting; ask for feedback if needed to assure a clear understanding of the issue.
- Remember, when only one person's needs are satisfied in a conflict, it is NOT resolved and will continue.
- Forget the past and stay in the present.
- Build 'power with' NOT 'power over' others.
- Thank the person for listening.

Developed by Wholistic Stress Control Institute, Inc.
Distributed by the State Wellness Program, a program of the Employee's Benefits Council

EEO Settlement Instructions and Templates Approved

Gregory A. Burke

On June 29, 2012, the Office of Resolution Management (ORM) introduced new EEO settlement templates and related instructions for use across VA in resolving EEO complaints of discrimination involving age and non-age based discrimination. The new templates replaced previous templates.

General Counsel staff reviewed the templates; this review process included surveying VA Regional Counsel offices for comments and suggestions concerning these templates.

The agreements contain standard clauses such as attesting to voluntariness, review, attorney fees, effective dates, and required signatures, that settlements need to resolve EEO complaints. Parties will be able to “fill in the blanks” to complete the agreements and reflect the terms of their particular settlement.

The templates will generally require: Agency Counsel’s review for legal sufficiency and signature; signature by an authorized agency official who has the authority to sign the agreement; and distinguishing between the terms required for age discrimination vs. non-age discrimination cases.

ORM has also provided an instruction or “cheat sheet” to highlight the key elements of settlement agreements and remind mediators, parties, and others involved in the EEO complaint process of what must be included in settlement agreements to assure that they are binding and in the interests of both parties.

The agreements can be downloaded from: <http://vaww.va.gov/adr/ADR4VACO.asp>

Third Culture (from page 3)

To conclude, this article suggests a new perspective, or frame, for understanding the role of a mediator. This article submits that a central responsibility of a mediator is to foster a third culture, wherein dispute resolution efforts can be undertaken productively and effectively. By combining professional skills that the mediator develops in mediation training and the cultural competence that a mediator must seek to uncover, if not develop in his or herself, a mediator is naturally equipped to create a third culture. In effect, it would seem that there is a natural fit between mediation and productive and effective management of communicative endeavors, with or without a conflict dimension, built on a third culture model. As a result, it is within a mediator’s interest and power to recognize, realize and to benefit from that fit in their own mediations and in a way that assists clients to realize their communication goals.



Workplace ADR Program

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Mediation:

A Solution to Workplace Disputes



The Workplace ADR Program solicits articles for VA's quarterly ADR newsletter. The purposes of the newsletter are to communicate information relating to the use of ADR in workplace disputes, and to serve as a resource for those interested in learning more about ADR and its application within VA.

We invite you to submit ideas and articles for the newsletter through your respective administrations:

VHA to Sherron McHellon (10A2E),
VBA to Johnny Logan (20M42),
NCA to Nicole Maldon (40A),
VACO staff offices to your VACO ADR Liaison,
Labor organizations to your ADR Council Representative.

We are looking for ideas and articles on ADR related topics, noteworthy activities, initiatives, accomplishments, best practices, or other items designed to educate and inform VA employees and managers on ADR and its benefits in addressing workplace disputes. We hope the VA community will find the newsletters a useful resource for obtaining interesting and helpful information representing ADR activity throughout VA.

For more information, visit our website:
<http://vaww.va.gov/adr/>



Core Values "ICARE"

Integrity

Commitment

Advocacy

Respect

Excellence